

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0286
SALES AND USE TAX
FOR TAX PERIOD 2002-2003**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax – Imposition

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(a); IC 6-8.1-5-4(a); IC § 6-8.1-5-1(b).

The taxpayer protests the imposition of sales tax on certain transactions.

II. Tax Administration- Ten Percent Negligence Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b)(c).

The taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer is an Indiana S corporation. Among other activities, the corporation repaired automobiles and sold used automobiles. After an audit for the tax period 2002-2003, the Indiana Department of Revenue, hereinafter referred to as the "Department," assessed additional sales tax, use tax, penalty, and interest. The taxpayer protested the assessments of sales tax and penalty. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax –Imposition

Discussion

In its regular filings with the Department, the taxpayer reported its gross receipts from the sale of automobiles and remitted sales tax based upon those receipts. The Bureau of Motor Vehicles' records indicated higher gross receipts from the sale of vehicles than the records of the taxpayer indicated. The Department added the additional gross sales reported by the Bureau of Motor Vehicles to the taxpayer's reported gross sales. Application of the rate of sales tax due to the greater gross receipts resulted in additional sales tax due to the state. The adjustment resulted in a higher sales tax liability for the taxpayer. The Department assessed the additional sales tax. The taxpayer protested this assessment.

Indiana imposes a sales tax on the sale of tangible personal property in a retail transaction by an Indiana retail merchant. IC § 6-2.5-2-1(a). The amount of sales tax due is computed by applying the sales tax rate to the gross retail receipts of the taxpayer.

Notices of proposed assessments are prima facie evidence that the Department's claim for unpaid taxes is valid. IC § 6-8.1-5-1(b). The taxpayer has the burden of proving that the Department incorrectly imposed the assessment. Id. Taxpayers have the duty to maintain books and records of their affairs and present those to the Department for review upon the Department's request. IC 6-8.1-5-4(a).

The taxpayer failed to provide any documentation to sustain its burden of proving that the Department incorrectly computed the taxpayer's additional sales tax liability.

Finding

The taxpayer's protest is denied.

II. Tax Administration- Ten Percent Negligence Penalty

Discussion

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;

- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer failed to keep adequate records and follow instructions issued by the Department. This failure constituted negligence.

Finding

The taxpayer's protest is denied.

KMA/BK/DK.-September 20, 2006